

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
TRUSTEES OF THE AMALGAMATED NATIONAL :  
HEALTH FUND and TRUSTEES OF THE NATIONAL :  
RETIREMENT FUND, :  
: Plaintiffs, :  
: :  
-against- :  
: :  
GREENWICH TRIANGLE LLC f/k/a SOUTHWICK :  
CLOTHING LLC, :  
: :  
Defendant. :  
-----X

**10-CV-4945(KMK)**

**PLAINTIFFS'**  
**SECOND AMENDED**  
**COMPLAINT**

Plaintiffs, by their attorney David C. Sapp, for their Second Amended Complaint against Defendant Greenwich Triangle LLC f/k/a Southwick Clothing LLC, respectfully allege as follows:

**NATURE OF ACTION**

1. This is an action by plan fiduciaries to enforce the provisions of a collective bargaining agreement and certain statutory obligations imposed upon Defendant by Section 515 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1145.

**JURISDICTION**

2. The jurisdiction of this Court is invoked pursuant to Section 301(a) of the Labor Management Relations Act of 1947, as amended (“LMRA”), 29 U.S.C. § 185(a) and Sections 502(a), (e) and (f) of ERISA, 29 U.S.C. § 1132(a), (e) and (f).

**VENUE**

3. Venue is properly laid in this Court pursuant to Section 301(a) of the LMRA, 29 U.S.C. § 185(a); Section 502(e) (2) of ERISA, 29 U.S.C. § 1132(e) (2); and 28 U.S.C. § 1391(b).

**THE PARTIES**

4. Effective January 1, 2010, the UNITE HERE National Health Fund changed its name to Amalgamated National Health Fund (“Health Fund”). Plaintiff Health Fund is an “employee welfare benefit plan” as defined in Section 3(1) of ERISA, 29 U.S.C. § 1002(1). Plaintiff Trustees of the Health Fund are fiduciaries within the meaning of Section 502(a) (3) of ERISA, 29 U.S.C. § 1132(a) (3), and as defined in Section 3(21) of ERISA, 29 U.S.C. § 1002(21). The Health Fund maintains its principal administrative offices at 333 Westchester Avenue, White Plains, New York 10604, within the Southern District of New York.

5. Effective September 24, 2010, the UNITE HERE National Retirement Fund changed its name to National Retirement Fund (“Retirement Fund”). Plaintiff Retirement Fund is an “employee pension benefit plan” as defined in Section 3(2) of ERISA, 29 U.S.C. § 1002(2). Plaintiff Trustees of the Retirement Fund are fiduciaries within the meaning of Section 502(a) (3) of ERISA, 29 U.S.C. § 1132(a) (3), and as defined in Section 3(21) of ERISA, 29 U.S.C. § 1002(21). The Retirement Fund maintains its principal administrative offices at 333 Westchester Avenue, White Plains, New York 10604, within the Southern District of New York.

6. Upon information and belief, Defendant Greenwich Triangle LLC f/k/a Southwick Clothing LLC is a Massachusetts corporation having or having had its principal place of business at 50 Island Street, Lawrence, Massachusetts 01840.

7. The New England Joint Board, UNITE HERE (“the Union”) is an unincorporated “labor organization” as defined in Section 3(4) of ERISA, 29 U.S.C. § 1002(4). Upon

information and belief, the Union and Defendant have been parties to a series of collective bargaining agreements covering all relevant periods herein. Pursuant to said collective bargaining agreements, contributions to Plaintiffs Health Fund and Retirement Fund were due to be paid monthly by Defendant.

**AS AND FOR A FIRST CLAIM FOR RELIEF BY PLAINTIFF  
TRUSTEES OF THE HEALTH FUND AGAINST DEFENDANT**

8. Plaintiff Trustees of the Health Fund repeat and reallege each and every allegation contained in paragraphs “1” through “7” of this Complaint with the same force and effect as if set forth at length herein.

9. In or about 2009, as permitted by the Health Fund’s Agreement and Declaration of Trust and the collective bargaining agreement between the Union and Defendant, the Health Fund performed an audit of the books and records of Defendant for the period of October 1, 2005 through and including December 31, 2007. The audit revealed contributions owing to the Health Fund arising from Defendant’s failure to report all of its payroll thereby resulting in audit deficiencies totaling \$70,417.59, interest thereon of \$23,374.34 and liquidated damages of \$23,374.34, all totaling \$117,166.27. By letter dated June 23, 2009 (Audit Bill No. 09UH114) (hereinafter, “June 23, 2009 audit deficiency notice”), the Health Fund demanded payment of the outstanding balance of \$117,166.27. (A copy of the June 23, 2009 audit deficiency notice letter is annexed hereto as Exhibit “A”).

10. Audit deficiencies for contributions plus interest thereon and liquidated damages due to the Health Fund from Defendant for the period of October 1, 2005 through and including December 31, 2007 have not been made and are now due and owing. By reason thereof,

Defendant is liable to Plaintiff Health Fund in the sum of \$117,166.27 for the period stated plus interest from June 23, 2009, the date of the audit deficiency notice, through the date of judgment, and additional liquidated damages to be calculated pursuant to ERISA and the Health Fund's rules and regulations.

11. No prior application has been made for the relief requested herein.

**AS AND FOR A SECOND CLAIM FOR RELIEF BY PLAINTIFF  
TRUSTEES OF THE RETIREMENT FUND AGAINST DEFENDANT**

12. Plaintiff Trustees of the Retirement Fund repeat and reallege each and every allegation contained in paragraphs "1" through "7" of this Complaint with the same force and effect as if set forth at length herein.

13. In or about 2009, as permitted by the Retirement Fund's Agreement and Declaration of Trust and the collective bargaining agreement between the Union and Defendant, the Retirement Fund performed an audit of the books and records of Defendant for the period of October 1, 2005 through and including December 31, 2007. The audit revealed contributions owing to the Retirement Fund arising from Defendant's failure to remit additional pension contributions of five cents per hour as required by the collective bargaining agreement between Defendant and the Union. The audit revealed audit deficiencies totaling \$40,564.13, plus interest thereon of \$13,667.80 and liquidated damages of \$13,667.80, all totaling \$67,899.73. By letter dated August 11, 2009 (Audit Bill No. 09UH151) (hereinafter, "the August 11, 2009 audit deficiency notice"), the Retirement Fund demanded payment of the outstanding balance of \$67,899.73. (A copy of the August 11, 2009 audit deficiency notice is annexed hereto as Exhibit "B").

14. Audit deficiencies for contributions plus interest thereon and liquidated damages due to the Retirement Fund from Defendant for the period of October 1, 2005 through and including December 31, 2007 have not been made and are now due and owing. By reason thereof, Defendant is liable to Plaintiff Retirement Fund in the sum of \$67,899.73 for the period stated plus interest from August 11, 2009, the date of the audit deficiency notice, through the date of judgment, and additional liquidated damages to be calculated pursuant to ERISA and the Retirement Fund's rules and regulations.

15. No prior application has been made for the relief requested herein.

**WHEREFORE**, Plaintiffs respectfully pray for an order and judgment:

- a. Directing Defendant to pay to the Amalgamated National Health Fund the principal amount of \$70,417.59; and
- b. Directing Defendant to pay to the Amalgamated National Health Fund interest on the principal amount of \$70,417.59 through the date of the June 23, 2009 audit deficiency notice in the amount of \$23,374.34, and interest from the date of the June 23, 2009 audit deficiency notice to the date of judgment, computed at an interest rate as prescribed by the Funds, pursuant to Section 502(g)(2)(C)(i) of ERISA, 29 U.S.C. § 1132(g)(2)(C)(i); and
- c. Directing Defendant to pay to the Amalgamated National Health Fund liquidated damages pursuant to Section 502(g)(2)(C)(ii) of ERISA, 29 U.S.C. § 1132(g)(2)(C)(ii) and the Health Fund's rules and regulations; and
- d. Directing Defendant to pay to the National Retirement Fund the principal sum of \$40,564.13; and
- e. Directing Defendant to pay to the National Retirement Fund interest on the principal amount of \$40,564.13 through the date of the August 11, 2009 audit deficiency notice

in the amount of \$13,667.80, and interest from the date of the August 11, 2009 audit deficiency notice to the date of judgment, computed at an interest rate as prescribed by the Funds, pursuant to Section 502(g)(2)(C)(i) of ERISA, 29 U.S.C. § 1132(g)(2)(C)(i); and

f. Directing Defendant to pay to the National Retirement Fund liquidated damages pursuant to Section 502(g)(2)(C)(ii) of ERISA, 29 U.S.C. § 1132(g)(2)(C)(ii) and the Retirement Fund's rules and regulations; and

g. Directing Defendant to pay to the Amalgamated National Health Fund and the National Retirement Fund the reasonable attorneys' fees and costs of the action, pursuant to Section 502(g)(2)(D) of ERISA, 29 U.S.C. § 1132(g)(2)(D); and

h. Granting such other legal and equitable relief as the Court deems appropriate.

Dated: White Plains, New York  
October 13, 2010

TRUSTEES OF THE AMALGAMATED  
NATIONAL HEALTH FUND and TRUSTEES OF  
THE NATIONAL RETIREMENT FUND,  
Plaintiffs

By:   
\_\_\_\_\_  
David C. Sapp (DS 5781)

*Attorney for Plaintiffs*

Alicare, Inc.  
333 Westchester Avenue  
North Building – Second Floor  
White Plains, New York 10604  
(914) 367-5576

**EXHIBIT A**

# Amalgamated Life

America's Labor Insurance Company\*

June 23, 2009

Keith Hawkins  
Audit Supervisor  
333 Westchester Avenue  
White Plains, NY 10604  
P: 914 367-5000  
F: 914 367-5788  
Email: khawkins@amalgamatedlife.com

Attn: Robert Nelson  
Southwick Clothing LLC  
50 Island Street  
Lawerence, MA 01840

Account #: 803100001  
Bill: #09UH114  
Period: 10/01/05 thru 12/31/07  
Amount: \$117,166.27

Dear Mr. Nelson:

Enclosed you will find a copy of our "Preliminary Summary of Audit Findings" for Benefit Funds. This is based on our audit of your firm's books and records for the period listed above. The amount due is attributable to the following:

(1). Unreported payroll

Below is the break down of the audit bill:

Health	\$62,458.29
Prescription	7,959.30
Liquidated Damages	23,374.34
Interest	23,374.34
Total amount due	\$117,166.27

Should you have any question please contact me as soon as possible but no later than thirty (30) days from the date of this letter. If you have no questions, payment is due in full no later than thirty-five (35) days from the date of this letter.

This "Preliminary Summary of Audit Findings" does not include payments in transit and only includes payments deposited as of the date printed on the bill.

Thank you for your anticipated cooperation regarding this matter, I can be reached at 914 367-4235.

Sincerely,



Keith Hawkins  
Audit Supervisor

C: Warren Pepicelli, Manager, New England Joint Board, UNITE HERE

BILL: 09UH114

TO: SOUTHWICK CLOTHING LLC  
50 ISLAND STREET  
LAWERENCE, MA 01840

UNITE HERE FUND ADMINISTRATORS  
914-367-4203  
PRELIMINARY AUDIT FINDINGS

Date:  
Firm #: \_\_\_\_\_  
Association: \_\_\_\_\_  
Audit Period: \_\_\_\_\_  
Remitted Thru: \_\_\_\_\_  
Interest: \_\_\_\_\_

LINE #	DESCRIPTION	PERIOD FROM	PERIOD THRU	CHARGEABLE	REPORTED	NOT REPORTED	RATE	FUNDS DUE	# OF MO.	INTEREST RATE
1	<b>HEALTH</b>									
2	"	10/01/05 - 12/31/05	\$ 754,739.57	\$ 719,483.80	\$ 35,255.77		23.60000%	\$ 8,320.36	41	0.50375
3	"	01/01/06 - 05/31/06	\$ 1,372,056.17	\$ 1,320,475.50	\$ 51,580.67		23.60000%	\$ 12,173.04	36	0.43077
4	"	06/01/06 - 12/31/06	\$ 1,920,878.64	\$ 1,848,665.69	\$ 72,212.95		25.60000%	\$ 18,486.52	29	0.33450
5	"	01/01/07 - 05/31/07	\$ 1,547,288.33	\$ 1,510,740.44	\$ 36,547.89		25.60000%	\$ 9,356.26	24	0.26973
6	"	06/01/07 - 12/31/07	\$ 2,166,203.67	\$ 2,115,036.62	\$ 51,167.05		27.60000%	\$ 14,122.11	17	0.18430
	<b>Subtotal</b>			\$ 7,761,166.38	\$ 7,514,402.05	\$ 246,764.33		\$ 62,458.29		"
7	<b>PREScription</b>									
8	"	10/01/05 - 12/31/05	\$ 754,739.57	\$ 691,290.42	\$ 63,449.15		2.400%	\$ 1,522.78	41	0.50375
9	"	01/01/06 - 12/31/06	\$ 3,171,589.37	\$ 2,984,196.82	\$ 187,392.55		2.400%	\$ 4,497.42	29	0.33450
10	"	01/01/07 - 12/31/07	\$ 3,590,497.78	\$ 3,509,701.99	\$ 80,795.79		2.400%	\$ 1,939.10	17	0.18430
	<b>Subtotal</b>			\$ 7,516,826.72	\$ 7,185,189.23	\$ 331,637.49		\$ 7,959.30		"
	Liquidated Damages on Health	10/01/05 - 12/31/07	\$ 62,458.29	\$						
	Liquidated Damages on Prescription	10/01/05 - 12/31/07	\$ 7,959.30	\$						
	<b>Subtotal for Liquidated Damages</b>		\$ 70,417.59	\$				\$		

TOTAL

FUNDS DUE  
\$ 70,417.59

Please issue check and mail with copy of this invoice to:

UNITE HERE National Health Fund  
PO Box 5426  
WHITE PLAINS, NY 10206-5426

DISPUTES MUST BE SUBMITTED IN WRITING WITHIN 30 DAYS. FULL PAYMENT IS DUE WITHIN 35 DAYS IF NO DISPUTE SUBMITTED.  
IF TOTAL DUE IS A CREDIT, PLEASE APPLY CREDIT TO NEXT MONTH'S REMITTANCE AND ATTACH A COPY OF THIS INVOICE.

**EXHIBIT B**



America's Labor Insurance Company®

August 11, 2009

Attn: Robert Nelson  
Southwick Clothing LLC  
50 Island Street  
Lawrence, MA 01840

Keith Hawkins  
Audit Supervisor  
333 Westchester Avenue  
White Plains, NY 19604  
P: 914 367-5000  
F: 914 367-5788  
Email: khawkins@amalgamatedlife.com

Account #:0870233  
Bill: #09UH151  
Period: 10/01/05 thru 12/31/07  
Amount: \$67,899.73

Dear Mr. Nelson:

Enclosed you will find a copy of our "Preliminary Summary of Audit Findings" for Benefit Funds. This is based on our audit of your firm's books and records for the period listed above. The amount due is attributable to the following:

(1). Additional pension rate as of 11/01/05 \$0.05 per hour. Firm failed to remit on the additional pension rate

Below is the break down of the audit bill:

Pension Hours	40,564.13
Liquidated Damages	13,667.80
Interest	13,667.80
Total amount due	\$67,899.73

Should you have any question please contact me as soon as possible but no later than thirty (30) days from the date of this letter. If you have no questions, payment is due in full no later than thirty-five (35) days from the date of this letter.

This "Preliminary Summary of Audit Findings" does not include payments in transit and only includes payments deposited as of the date printed on the bill.

Thank you for your anticipated cooperation regarding this matter, I can be reached at 914 367-4235.

Sincerely,

Keith Hawkins  
Audit Supervisor

C: Warren Pepicelli, Manager, New England Joint Board, UNITE HERE

BILL: 09UH151  
 TO: SOUTHWICK CLOTHING LLC  
 50 ISLAND STREET  
 LAWERENCE, MA 01840

## PRELIMINARY AUDIT FINDINGS

LINE #	DESCRIPTION	PERIOD FROM	THRU	CHARGEABLE	REPORTED	NOT REPORTED	RATE	FUNDS DUE	# OF MO.	INTEREST RATE	INTEREST DUE	TOTAL DUE FUNDS + INTEREST
<b>1 PENSION / HOURS</b>												
2	"	11/01/05	- 12/31/05	52,630.35		-	52,630.35	\$ 0.05	\$ 2,631.52	42	0.51879	\$ 1,365.21
3	"	01/01/06	- 03/31/06	80,304.60		-	80,304.60	\$ 0.05	\$ 4,015.23	39	0.47412	\$ 1,903.71
4	"	04/01/06	- 06/30/06	90,523.10		-	90,523.10	\$ 0.05	\$ 4,526.16	36	0.43077	\$ 1,949.73
5	"	07/01/06	- 09/30/06	86,767.81		-	86,767.81	\$ 0.05	\$ 4,338.39	33	0.39869	\$ 1,686.29
6	"	10/01/06	- 12/31/06	102,874.64		-	102,874.64	\$ 0.05	\$ 5,143.73	30	0.34785	\$ 1,759.24
7	"	01/01/07	- 03/31/07	97,959.24		-	97,959.24	\$ 0.05	\$ 4,897.96	27	0.30821	\$ 1,509.59
6	"	04/01/07	- 06/30/07	92,443.09		-	92,443.09	\$ 0.05	\$ 4,622.15	24	0.26973	\$ 1,246.75
7	"	07/01/07	- 09/30/07	99,048.71		-	99,048.71	\$ 0.05	\$ 4,952.44	21	0.23239	\$ 1,150.91
6	"	10/01/07	- 12/31/07	108,731.07		-	108,731.07	\$ 0.05	\$ 5,436.55	18	0.19615	\$ 1,066.37
<b>Subtotal</b>												
		\$ 811,282.61		\$ -	\$ 811,282.61		\$ -	\$ 40,564.13		\$ -	\$ 13,667.80	\$ 54,231.93
<b>Liquidated Damages on Pension Hours</b>												
		11/01/05	12/31/07	\$ -	\$ 40,564.13		\$ -	\$ -		\$ -	\$ 13,667.80	\$ 13,667.80
<b>Subtotal for Liquidated Damages</b>												

Please issue check and mail with copy of this invoice to:  
 UNITE HERE National Health Fund  
 PO Box 5426  
 WHITE PLAINS, NY 10206-5426

TOTAL FUNDS DUE	INTEREST & LIQ. DAMAGES	TOTAL FUNDS + LIQ. DAMAGES	LIQ DAMAGES	TOTAL DUE
\$ 40,564.13	\$ 27,335.60	\$ 67,899.73	\$ 67,899.73	\$ 67,899.73

DISPUTES MUST BE SUBMITTED IN WRITING WITHIN 30 DAYS. FULL PAYMENT IS DUE WITHIN 35 DAYS IF NO DISPUTE SUBMITTED.  
 IF TOTAL DUE IS A CREDIT, PLEASE APPLY CREDIT TO NEXT MONTH'S REMITTANCE AND ATTACH A COPY OF THIS INVOICE.